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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. [redacted] 504

J. P. SHELTON,
Petitioner

v.

STATE OF GEORGIA,
Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent prays that the petition for writ of certiorari be denied, giving reasons herein for this position.

CITATION TO OPINION BELOW

In addition to the citations given in the petition, the opinion of the Court of Appeals of Georgia is reported in 111 Ga. App. 351.

JURISDICTION

Whether the jurisdiction of this Court is properly invoked depends upon whether the petitioner for certiorari properly raised in the state court a claim of vio-

lation of some right, privilege or immunity, which he had under the constitution of the United States. Title 28 U.S.C.A., 1257 (3). We doubt that such a question is presented in this case. It may depend, however, upon the construction which this Court may place upon the allegations of the "Motion to Suppress Evidence" (Tr. 17). It will be noticed that on page 16 of the printed petition the petitioner shows that he is relying upon the allegations of his "Motion to Suppress Evidence" and his later renewals of it during the trial and in the Motion for New Trial, as setting forth his "manner of raising question in trial court." This Court will of course on its own motion consider and decide asserted questions of its jurisdiction, regardless of the opinions of litigants. We therefore merely suggest that the language of said "Motion to Suppress Evidence" be carefully scanned and considered on the question of whether jurisdiction is properly invoked.

QUESTION PRESENTED

The Question as set forth on page 2 of the petition is insufficiently stated, in that some necessary elements are omitted:

(a) It fails to state that the car from which the papers were taken was a *stolen* automobile and that the officers did not open the trunk and discover the papers which were introduced until after they had found that the car was stolen. (Testimony of Captain Brown, quoted in Tr. 12 and Tr. 33.)

(b) It fails to state that the car had been *abandoned* for many weeks on a private parking lot, until it was finally impounded and the investigation instituted by the police.

(c) It fails to state that defendant Shelton was *not present* at said opening of the car and seizure of the papers.

(d) It fails to state that defendant Shelton had never asserted any claim of ownership or possessory interest in said car so as to put the police officers on notice of any rights which he might have.

(e) It fails to state that the tag registration of said car was in a "Stanley Mack" of an address in Decatur, Georgia, according to the car registration at the Georgia Motor Vehicle License Bureau, and that the police had made effort to locate such a person and were unable to find such a person. (The address was a hotel, and the hotel clerk testified that no such person as Stanley Mack had lived or stayed there.) (Testimony of P. H. Mell, the hotel clerk, and testimony of Captain Hugh D. Brown, Tr. 32 et seq. show the search made for such person.)

In our opinion the above points should be added to the statement of the question presented, so that it should be stated as follows:

QUESTION RESTATED:

Whether a defendant, charged with a criminal case in a State Court, has standing under the Fourth and Fourteenth Amendment to object to the introduction in evidence of papers and articles obtained through a search by State officers of a stolen automobile which had been hauled into a garage and impounded as an abandoned car because it had been left for weeks at a time upon the parking lot of a large apartment house where it did not belong, not being the car of any occupant of said apart-

ments, and when the defendant was not present at the time of the search of the car, was not the owner, and had never asserted any claim of ownership or possessory interest in said car or any of its contents, so as to put the police officers on notice of any rights which he might have, and when the police officers before searching the car had found that it was a stolen car and that its license tag registration had been issued in name of a supposed person who could not be found or identified and had never lived at the address given on said registration record.

Also involved in this case is the Question whether the search of the automobile and seizure of the evidence was *reasonable,* under all the circumstances of the case.

STATEMENT

The "statement" in the petition for certiorari omits a good many matters of evidence and Record in this case, which seem to us necessary to present a true picture of the Question presented. We shall therefore set forth some of these points, giving the approximate pages of the Transcript. (We regret that we cannot give the exact paging, in all instances, since no exact copy of the Transcript as filed in the Supreme Court is available to use.)

(a) On lines 13 and 14 the Statement refers to "results of a search of the automobile, alleged by the State to have been received and possessed by the defendant. . . ." It should be added that Shelton was *not present* at the search of the car, that it had been hauled by a wrecker to a garage and impounded by the manager of a large apartment building because it had been parked there

without authority on the parking lot of said apartment, and did not belong to any tenant or occupant of said apartment building and was therefore apparently an abandoned car. (See testimony of Mrs. Proctor, Tr. 21, et seq.) Before having the car impounded she had investigated and ascertained the name that the license tag was registered under, and "couldn't locate him" (Tr. 28), so she conferred with some police officers and then had the car pulled to a garage, where the police went and looked it over. She testified that she "didn't know a Stanley Mack, other than the car being registered in his name," and didn't know whether there was a man by that name. (Tr. 30). Witnesses I. L. Harris and P. L. Suddeth testified to the car being hauled by their wrecker to Millirons garage on request of the apartment manager. (Tr. 29-31). A police officer, Capt. Hugh Brown (Tr. 32 et seq.), testified to receiving notice of the car being hauled into Millirons garage, and going there and looking at it; he checked the license tag number and found it to be registered to a Stanley Mack at an address in Decatur, Ga., where he didn't live, and conducted other investigation and found out that "the car was stolen from Rich's parking lot last August." He testified that "we didn't open the trunk" of the automobile "until after we found that the car was stolen." (Tr. 33) In the trunk of the car the officers found certain checks and other articles, which upon investigation by fingerprint experts were discovered to bear the fingerprints of Jay P. Shelton, this defendant.

(b) The *possession* of the automobile by the defendant, proven by the State at the trial, was not possession at the time of the search and seizure by the police officers, nor just prior thereto. It was *possession* at times

several weeks and months before the car was hauled to the garage as an abandoned car. Several witnesses identified Shelton as having driven the car, and having walked to the car, during the period of months that it had been left on this apartment parking lot from time to time. But they didn't know who he was, and it was not ascertained to be a stolen car on those occasions. Mrs. Proctor identified Shelton, in the courtroom at the trial, as the man she had seen at least three times, either driving the car away from the parking lot, or on the parking lot near it, walking. (Tr. 25-28) The defendant vigorously cross-examined Mrs. Proctor as to her identification of him, demanding clothing worn, facial characteristics, ears, eyes, nose, etc. Then some other people (Major Amos and wife), testified to having seen Shelton in the car, and identified him in the courtroom. Then he ended up admitting, in his unsworn statement to the jury as defendant, that he had parked the car there on the apartment house parking lot, but didn't say how many times or what dates.[1] He said he was negotiating to buy or trade the car from the person referred to as Stanley Mack. (Tr. about 46-55)

In his unsworn statement to the jury, Shelton did not even claim that the checks (which bore his fingerprints) belonged to him. He said they fell out accidentally and he picked them up, as an explanation of how his fingerprints got on them. (Tr. 49 et seq.)

(c) Capt. Brown, recalled to the stand (Tr. about

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[1]In Georgia a defendant on trial may now be sworn and testify as a witness in his own behalf, if he so elects (Ga. Laws 1962, page 133), but at his option he may make an "unsworn statement" as formerly, and the unsworn statement is not evidence. cf. FERGUSON v. GEORGIA, 365 U.S. 570.

42-46), testified to several matters that support the State's contention that the search of the car was reasonable and legal under the circumstances: He testified further that he "couldn't locate a Stanley Mack," the name on the automobile registration record for the license tag on the car. (Tr. about 43) He testified that after he was unable to locate a Stanley Mack, he contacted Mr. McKibben of the national automobile theft bureau to ascertain where he could find the confidential number on that model Cadillac. (Tr. 43, also Tr. 32) He testified that one thing that particularly aroused his suspicion that it was a stolen car was that while he was enroute from his police headquarters to the garage to see this car the first time he received radio information that a lady was at the garage attempting to take it away, and when he arrived he found that the lady had gone, that she had been asked to await the arrival of the police who were on their way, and she immediately "got in a cab and went away." (Tr. about 45)

(d) MOTION TO SUPPRESS. In his Appendix B, the petitioner for certiorari shows that the "manner of raising question in trial court" was by written motion to suppress evidence prior to trial, and renewing the motion from time to time during the trial when the evidence was being presented. By examining the motion to suppress, (Tr. 17) it will be seen that it contained *no claim* that the car was the property of Jay Paul Shelton, and contained *no claim* that he had ever been in possession of it, and contained *no claim* that any of the articles seized from the said car belonged to him or had ever been in his possession.

REASONS FOR NOT GRANTING THE WRIT

I. The Search was Reasonable

The prohibition of the Fourth Amendment is against *unreasonable* searches and seizures. A search is invalid only if unreasonable. *Lane* v. *U. S.* 321 F.2d 573. Cert. den. 377 U.S. 936, 84 S.Ct. 1340.

In *Lanza* v. *New York,* 370 U. S. 139, on page 143, 83 S.Ct. 799, the Supreme Court said that areas protected by this guarantee might be a house, a store, or an apartment, and that "an automobile may not be unreasonably searched."

In *U. S.* v. *Stokely,* 311 F.2d 593, it was held that search of an automobile trunk, loaded with non-tax-paid whiskey, by state troopers, was not unreasonable under the circumstances of that case, though the defendant driver of the vehicle was present and had been stopped only for reckless driving.

Reasonableness of the search and seizure must be determined on the facts and circumstances of each case. *Com.* v. *Bosurgi,* 190 A.2d 304 (Pa.) cert. den. 375 U. S. 910, 84 S.Ct. 204.

The Fourth Amendment does not secure persons against any and all searches and seizures, but only against *unreasonable* searches and seizures. *Naylor* v. *Walker,* 206 F.Supp. 544; cert. den. 371 U.S. 957, 83 S.Ct. 514.

Com. v. *Richards* (Pa.) 182 A.2d 291 (10); appeal dism. 373 U.S. 376, 83 S.Ct. 1313.

In *State* v. *Brindley* (Conn. 1963) 200 A.2d 247, a motor vehicle was stopped by officers to check the windshield wiper, and while so checking they saw burglar

tools in the car, and they learned that one of the occupants had once served a term for burglary; the court held reasonable the search and seizure of the tools.

In the light of all the circumstances shown in the present case, the search of the abandoned and impounded automobile by the police officers was reasonable, especially after the investigation showed that it was a stolen car and that the person in whom the license tag was registered could not be found and had given a false address.

II. Shelton did not have standing

But for another reason, the petitioner in the present case is not entitled to the relief sought. Regardless of the question of the legality or illegality of the search and seizure, Shelton does not have "standing" to complain. He was not the owner of the car, and didn't even claim in his motion to suppress that he was the owner or had ever been in possession of it. The most that he claimed in his motion to suppress was that "the purported and apparent owner of said car, Stanley Mack, had requested and authorized the defendant to take possession of the said automobile." (Paragraph 4 of motion)

The federal courts in numerous cases, and with unanimity, have denied standing to one not the victim of an unconstitutional search and seizure to object to the introduction in evidence of that which was seized. *Goldstein* v. *United States,* 316 U.S. 114, at 121, 62 S.Ct. 1000 at 1004. A footnote under the above statement in *Goldstein* says: "The principle has been applied in at least fifty cases by the Circuit Courts of Appeals in nine circuits, and in the Court of Appeals for the District

of Columbia, not to mention many decisions by District Courts."

The petitioner for certiorari seems to rely principally upon *Jones* v. *United States,* 362 U.S. 257. But in that case the defendant Jones was the *occupant* of a certain apartment and was *present* in that apartment at the time officers found narcotics in unstamped packages, as alleged, and he had been seen to put his hand to the place where the narcotics were found. In his federal district court trial it was contended that he did not have standing to object to the introduction of the evidence against him, since he was not the owner of the apartment but a mere invitee. The Court held that he did have standing, and said that "* * anyone legitimately on premises where a search occurs may challenge its legality by way of a motion to suppress, when its fruits are proposed to be used against him."

The present case is far different, and not controlled by the above decision, Shelton not being the occupant of the car nor present at the search of it, and the car having been parked for extended periods on a parking lot where it didn't belong and having been finally hauled to a garage as an abandoned car and the police notified, and the police having investigated and having been unable to locate such a person as the one named on the license tag registration, and having ascertained that it was a stolen car. This situation does not put Shelton in position to raise questions as to the right of the officers to make the search of the car.

In *Jeffers* v. *U. S.,* 187 F.2d 498 (4), on page 500, affirmed 342 U.S. 48, 72 S.Ct. 92, the language of *Goldstein,* supra, was repeated, to the effect that the federal

courts in numerous cases, and with unanimity, have denied standing to one not the victim of an unconstitutional search and seizure to object to the introduction in evidence of that which was seized.

III. Ruling of State Appellate Court is issue here, not language used

In his motion for new trial in the State court, Shelton contended that the articles found in the automobile and used in evidence against him "were obtained by an illegal search and seizure in violation of the Constitution of the United States." (Tr. 12-15) And in his Motion to Suppress the evidence he named the constitutional provision as the Fourth Amendment, (Tr. 17), contending that the search and seizure *"violated his rights* under the Fourth Amendment of the United States."

The *ruling* of the Court of Appeals of Georgia was that the search and seizure and the use of the evidence against him in the trial did *not violate* his constitutional rights as contended.

The petition for certiorari complains of certain language of the opinion of the Court of Appeals of Georgia, seeking to have the case decided upon the basis of whether the language of the opinion was right or wrong. But it is not the language of the opinion which is under review here. It is the ruling.

The Supreme Court "reviews judgments, not statements in opinions." *Black* v. *Cutter Laboratories,* 351 U.S. 292 (a), 297; 76 S.Ct. 824.

So the question here is whether the ruling was correct that the seized evidence used against Shelton did not violate the constitutional standards set forth in the

Fourth Amendment. In *Mapp* v. *Ohio*, 267 U.S. 643, it was held that the Fourth Amendment was made applicable to the States through the Fourteenth Amendment. And in *Ker* v. *California*, 374 U.S. 23, 33, the Court said: "* * * Although the standard of reasonableness is the same under the Fourth and Fourteenth Amendments, the demands of our federal system compel us to distinguish between evidence held inadmissible because of our supervisory powers over Federal courts and that held inadmissible because prohibited by the United States Constitution."

The primary purpose of the constitutional guarantees is to prevent unreasonable invasions of the security of the people in their persons, houses, papers and effects. No unreasonable invasion was made of any rights possessed by Jay P. Shelton in this case.

CONCLUSION

For all the foregoing reasons, Respondent urges this Court to decline to issue the writ of certiorari.

Respectfully submitted,

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J. WALTER LECRAW,
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CERTIFICATE OF SERVICE

GEORGIA, FULTON COUNTY

I, J. Walter LeCraw, of counsel for the State of Georgia, respondent in the foregoing case, certify that I have this day served copies of the foregoing Brief of Respondent in Opposition to petition for writ of certiorari upon Petitioner, by depositing in the United States Post Office in Atlanta, Georgia, two copies of same in an envelope addressed to Wesley R. Asinof, Attorney, 419 Atlanta National Building, Atlanta, Georgia, 30303, counsel of record for petitioner, with sufficient first class postage affixed thereto.

This October 5, 1965.

J. WALTER LECRAW,
Assistant Solicitor General
Atlanta Judicial Circuit.